

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15070 of Mr. and Mrs. Yvon Le Dain, pursuant to 11 DCMR 3107.2, for a variance from the rear yard requirements (Sub-section 404.1), and a variance from the side yard requirements (Sub-section 405.9) for a proposed deck addition to a dwelling in an R-2 District at premises 3836 McKinley Street, N.W., (Square 1859, Lot 88).

HEARING DATE: July 28, 1989
DECISION DATE: September 6, 1989

FINDINGS OF FACT:

1. The subject property is located on the south east corner of McKinley and 39th Streets, N.W. Boundaries of the square in which the property is situated are McKinley Street to the north, Morrison Street to the south, 39th Street to the west and Connecticut Avenue to the east. The site is in the R-2 District.

2. The subject site is improved with a two-story with basement, brick, detached single-family dwelling. It was built in 1926. The house fronts on McKinley Street to the north and 39th Street to the west. A fifteen foot building restriction line exists along both street frontages. There is an adjacent structure to the east of the subject property and another structure whose side yard abuts the rear of the property to the south.

3. There is a one-car garage at ground level on the west side and a driveway used for parking to the east of the house. A deck with stairs was attached to the east side of the structure either as part of the original construction or at some other time prior to enactment of the Zoning Regulations. The deck has since collapsed and been replaced by the applicants. This application involves permission to allow a wood side deck which extends around the house to cover a portion of the rear yard.

4. In the R-2 District, an 8-foot side yard and a 20-foot rear yard are required. A lot occupancy of 40 percent or 1,200 square feet is permitted. The deck occupies 3' - 8" of the existing 5' - 8" side yard and the entire depth of the 10' - 0" rear yard. Therefore, the applicants are requesting a side yard variance of 3' x 8" or 65 percent and a rear yard variance of 10 feet or 100 percent. With the deck, the lot occupancy is only 1,154

square feet, therefore, no variance from the lot occupancy requirement is needed.

5. The applicants testified that their property is unique because of the manner in which the house is situated on the land. The front yard and western side yard are large while the eastern side yard and rear yard are very small. The applicants testified further that because theirs is a corner lot located directly across the street from Magruder's store parking lot, it is subject to a great deal of traffic from both McKinley Street and 39th Street. Close proximity to this traffic creates a dangerous condition for the applicants and creates a practical difficulty in the applicants' ability to protect their small child.

6. The applicants indicated that they questioned three different contractors about the need for a permit. Each of them responded that no permit was necessary. The applicants felt the need to repair the deck quickly to prevent injury to any one.

7. The applicants testified that there is a kitchen door located at the eastern side of the house that is approximately 5 feet above ground level and cannot be used without the side deck. The deck and stairs are needed to make the kitchen accessible to the outside. The side yard deck measures approximately 3' - 8" by 14' - 0".

8. The applicants testified that the rear yard offers no privacy. There is a low wall located on the property line which divides the subject lot and the lot to the south. The deck at the rear of the house is intended to provide the applicants with privacy and safety for their child. The rear yard deck is lower than the side yard deck and is connected by a stair. The rear yard deck measures ten feet in depth from the existing house by twelve feet in width along the rear lot line. The deck is approximately three feet above grade and has a railing of 4' - 4" high.

9. Noting the support of their neighbors, the applicants indicated that the decks will not create a substantial detriment to the public good. They also note that the rear deck occupies less than half of the width of the rear yard.

10. The applicants indicated that the house is a nonconforming structure which predates enactment of the Zoning Regulations.

11. The Office of Planning (OP), by memorandum dated Jul7 20, 1989, recommended approval of the application. OP noted the location and description of the subject lot. It was further noted that the R-2 District permits up to single family semi-detached dwellings as a matter of right. The OP

is of the opinion that the addition will afford the applicants the needed privacy, and that the deck appears to be an appropriate addition to the property.

13. Advisory Neighborhood Commission (ANC) 3G, by letter dated June 7, 1989, expressed support for the application. The ANC noted that the nearest neighbor on McKinley Street has no objection to the proposed plan to reconstruct the deck. The ANC was unaware of any opposition to the project at the time of filing the report.

14. The Board finds that the nearest neighbor on McKinley Street is in support of the application. However, the owners of the abutting property to the south on 39th Street are in opposition to the rear deck.

15. Owners of the property immediately to the south, 5529 - 39th Street, testified in opposition to the application. They testified that there are similar lots in the area and that the subject lot is not unique. They further testified that the proximity of the rear deck to their property creates an adverse impact. Because the deck is elevated and built to the property line, it is readily visible from the living room and dining room windows of the their house. They also indicated that the deck destroys the views from the front and rear of their house. The opponents were also very concerned that the deck was built in only two days without notifying them and without the proper permits.

16. Responding to the issues raised by the opponents, the Board finds that for reasons stated below the lot is unique and presents a practical difficulty to the owners.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicants are seeking area variances for the construction of a side and rear yard deck addition to their single family dwelling in an R-2 District. The granting of variances requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that granting the requested relief will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicants have met their burden of proof.

The Board concludes that the house, constructed prior to the present Zoning Regulations, is situated on the

property in such a manner that the front and west side yards are large and the rear and east side yards are very small. The lot is also a corner lot which is restricted by building restriction lines along its two street frontages. The Board further concludes that one cannot gain access to the exterior kitchen door from the outside without a structure. The Board is of the opinion that these are exceptional conditions which create a practical difficulty upon the owners in the reasonable use of their property.

The Board concludes that the side and rear yard decks will not adversely affect the adjoining property owners to the east or south. Therefore the Board concludes that granting the variances will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone plan.

The Board concludes that it has afforded the ANC the "great weight" to which it is entitled. Accordingly, it is ORDERED that the application is GRANTED.

VOTE: 3-0 (Paula L. Jewell, Carrie L. Thornhill and William F. McIntosh to grant; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER: JUN 19 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

BZA APPLICATION NO. 15070
PAGE 5

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15070order/BHS22

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15070

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated JUN 19 1990, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Mr. & Mrs. Yvon Le Dain
3836 McKinley Street, N.W.
Washington, D.C. 20015

Mr. Donald F. Mercer, Jr.
7011 Georgia Street
Chevy Chase, Maryland 20815

Judith D. Mercer
3614 Spring Street
Chevy Chase, Maryland 20815

Allen Beach, Chairperson
Advisory Neighborhood Commission 3-G
P.O. Box 6252, Northwest Station
Washington, D. C. 20015

A handwritten signature in dark ink, appearing to read "E. L. Curry", is written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: JUN 19 1990